

**APPENDIX: C**

**SAMPLE ENVIRONMENTAL EASEMENT  
THE LEONARD CHEMICAL SUPERFUND SITE**

DRAFT: 1/21/03

APPENDIX 3

SAMPLE

ENVIRONMENTAL PROTECTION EASEMENT  
AND  
DECLARATION OF RESTRICTIVE COVENANTS  
FOR THE LEONARD CHEMICAL SUPERFUND SITE  
CATAWBA, YORK COUNTY, SOUTH CAROLINA

1. This Environmental Protection Easement and Declaration of Restrictive Covenants is made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between Leonard Chemical, Co. and Lawrence K. Leonard ("Grantor"), having an address of \_\_\_\_\_, the United States of America and its assigns, and MEMBER OF THE GROUP OR (TBE) ("Grantees"), having the following addresses:

To be determine (TBA)

WITNESSETH:

2. WHEREAS, Grantor is the owner of a parcel of land located in Catawba County, South Carolina, more particularly described on **Exhibit** \_\_\_\_ attached hereto and made a part hereof (the "Property"); and

3. WHEREAS, the Property is part of the Leonard Chemical Co. Superfund Site (hereinafter "the Site") consists of approximately 6.5 acres of land in an industrial area located about half mile east of Catawba, South Carolina, and nine miles southeast of Rock Hill, South Carolina. The Site is in York County on Cureton Ferry Road (County Road 46-697).

4. WHEREAS, in a Record of Decision dated August 20, 2001, (the "ROD"), the EPA Region 4, Regional Administrator selected a "remedial action" for the Site, which provides, in part, for the following actions: institutional controls, in-situ source area vacuum extraction for subsurface soils, excavation and off-site disposal of surface soils exceeding remedial goals, and in-situ sparging for shallow aquifer impacts; and

5. WHEREAS, the parties hereto have agreed that it is appropriate and necessary 1) to grant a permanent right of access over the Property to the Grantees for purposes of implementing, facilitating and monitoring the remedial action; and 2) to impose on the Property use restrictions as covenants that will run with the land for the purpose of protecting human health and the environment, *in accordance with the applicable law of the State of South Carolina* \_\_\_\_\_; and

6. WHEREAS, Grantor wishes to cooperate fully with the Grantees in the implementation of all response actions at the Site;

NOW, THEREFORE:

7. Grant: Grantor, on behalf of itself, its successors and assigns, in consideration of the terms of the Consent Decree for Remedial Design and Remedial Action for the Leonard Chemical Superfund Site, does hereby covenant and declare that the Property shall be subject to the restrictions on use set forth below, and does give, grant and convey to the Grantees, and their assign, with general warranties of title, 1) the perpetual right to enforce said use restrictions, and 2) an land use restriction of the nature and character and for the purposes hereinafter set forth, with respect to the Property.

8. Purpose: It is the purpose of this instrument to convey to the Grantees real property rights, which will run with the land, to facilitate the remediation of past environmental contamination and to protect public health and the environment by reducing the risk of exposure to contaminants.

9. Restrictions on use: The following covenants, conditions, and restrictions apply to the use of the Property, run with the land and are binding on the Grantor and all who own any interest or use or occupy the Property.

a) *The land comprising the Leonard Chemical Superfund Site and referred herein as the Property (Exhibit A) shall not be used for residential purposes.*

b) *Groundwater underlying the Site shall not be extracted, consumed, exposed or utilized in any way, except for the limited purpose of treating and monitoring groundwater contamination levels in accordance with plans approved by the EPA [Except that the proposed development of the land for [fill in use], as described in detail on Exhibit B attached, has been found by EPA to be compatible with the remedial action and is specifically permitted. Upon completion of the proposed development, and upon the request and submission of all necessary documentation by the Grantor, EPA and the State, EPA agrees to provide a written certification that all improvements constructed on the site are compatible with the remedial action, provided EPA, in its sole discretion, and in consultation*

with the State, makes such a determination. ]

*[Exhibit B, referenced in the above paragraph, will describe the planned use(s) and improvements. It should include such level of detail as EPA determines is necessary to be sure that the proposed uses and construction plans, will not threaten the remedial action, the public health or the environment. The purpose is to establish a baseline for future reference.]*

10. Modification of restrictions: The above restrictions may be modified, or terminated in whole or in part in accordance with applicable law of the State of South Carolina § \_\_\_\_\_ after consultation with EPA.

11. Environmental Protection Easement: Grantor hereby grants to the Grantees an irrevocable, permanent and continuing right of access at all reasonable times to the Property for purposes of:

- a) Implementing the response actions in the ROD, including but not limited to, soil treatment, removal, placement, and replacement; groundwater treatment through, among other measures, air sparging bioremediation enhancement, in-situ air or nitrogen sparging, and installation of a treatment fence using;
- b) Verifying any data or information submitted to EPA;
- c) Verifying that no action is being taken on the Property in violation of the terms of this instrument or of any federal or state environmental laws or regulations;
- d) Monitoring response actions on the Site and conducting investigations relating to contamination on or near the Site, including, without limitation, sampling of air, water, sediments, soil;
- e) Conducting periodic reviews of the remedial action, including but not limited to, reviews required by applicable statutes and/or regulations; and
- f) Implementing additional or new response actions if the Grantees, in their sole discretion, determines i) that such actions are necessary to protect the environment because either the original remedial action has proven to be ineffective or because new technology has been developed which will accomplish the purposes of the remedial action in a significantly more efficient or cost effective manner; and, ii) that the additional or new response actions will not impose any significantly greater burden on the Property or unduly interfere with the then existing uses of the Property.

12. Reserved rights of Grantor: Grantor hereby reserves unto itself, its successors,

and assigns, all rights and privileges in and to the use of the Property which are not incompatible with the restrictions, rights and easements granted herein.

13. Nothing in this document shall limit or otherwise affect the Grantees' rights of entry and access or Grantees' authority to take response actions under CERCLA, the NCP, or other federal or state laws.

14. No Public Access and Use: No right of access or use by the general public to any portion of the Property is conveyed by this instrument.

15. Notice requirement: Grantor agrees to include in any instrument conveying any interest in any portion of the Property, including but not limited to deeds, leases and mortgages, a notice which is in substantially the following form:

**NOTICE: THE INTEREST CONVEYED HEREBY IS  
SUBJECT TO AN ENVIRONMENTAL PROTECTION  
EASEMENT AND DECLARATION OF RESTRICTIVE  
COVENANTS, DATED \_\_\_\_\_, 20\_\_\_\_, RECORDED IN  
THE PUBLIC LAND RECORDS OF CATAWBA COUNTY,  
SOUTH CAROLINA ON \_\_\_\_\_, 20\_\_\_\_, IN BOOK  
\_\_\_\_\_, PAGE \_\_\_\_\_, IN FAVOR OF AND  
ENFORCEABLE BY, THE UNITED STATES OF AMERICA  
AND [MEMBER OF THE GROUP].**

Within thirty (30) days of the date any such instrument of conveyance is executed, Grantor must provide Grantees with a certified true copy of said instrument and, if it has been recorded in the public land records, its recording reference.

16. Administrative jurisdiction: The federal agency having administrative jurisdiction over the interests acquired by the United States by this instrument is the EPA.

17. Enforcement: The Grantees shall be entitled to enforce the terms of this instrument by resort to specific performance or legal process. All remedies available hereunder shall be in addition to any and all other remedies at law or in equity, including CERCLA. Enforcement of the terms of this instrument shall be at the discretion of the Grantees, and any forbearance, delay or omission to exercise its rights under this instrument in the event of a breach of any term of this instrument shall not be deemed to be a waiver by the Grantees of such term or of any subsequent breach of the same or any other term, or of any of the rights of the Grantees under this instrument.

18. Damages: Grantees shall be entitled to recover damages for violations of the terms of this instrument, or for any injury to the remedial action, to the public or to the environment protected by this instrument.

19. Waiver of certain defenses: Grantor hereby waives any defense of laches, estoppel, or prescription.

20. Covenants: Grantor hereby covenants to and with the United States [TBD: MEMBER OF THE GROUP] and its assigns, that the Grantor is lawfully seized in fee simple of the Property, that the Grantor has a good and lawful right and power to sell and convey it or any interest therein, that the Property is free and clear of encumbrances, except those noted on [Exhibit C, IF NEEDED] attached hereto, and that the Grantor will forever warrant and defend the title thereto and the quiet possession thereof.

21. Notices: Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other shall be in writing and shall either be served personally or sent by first class mail, postage prepaid, addressed as follows:

To Grantor:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

To Grantees:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

22. General provisions

Controlling law: The interpretation and performance of this instrument shall be governed by the law of the United States or, if there are no applicable federal laws, by the law of the state where the Property is located.

b) Liberal construction: Any general rule of construction to the contrary notwithstanding, this instrument shall be liberally construed in favor of the grant to effect the purpose of this instrument and the policy and purpose of CERCLA. If any provision of this instrument is found to be ambiguous, an interpretation consistent with the purpose of this instrument that would render the provision valid shall be favored over any interpretation that would render it invalid.

c) Severability: If any provision of this instrument, or the application of it to any person or circumstance, is found to be invalid, the remainder of the provisions of this

instrument, or the application of such provisions to persons or circumstances other than those to which it is found to be invalid, as the case may be, shall not be affected thereby.

d) Entire Agreement: This instrument sets forth the entire agreement of the parties with respect to rights and restrictions created hereby, and supersedes all prior discussions, negotiations, understandings, or agreements relating thereto, all of which are merged herein.

e) No Forfeiture: Nothing contained herein will result in a forfeiture or reversion of Grantor's title in any respect.

f) Joint Obligation: If there are two or more parties identified as Grantor herein, the obligations imposed by this instrument upon them shall be joint and several.

g) Successors: The covenants, terms, conditions, and restrictions of this instrument shall be binding upon, and inure to the benefit of, the parties hereto and their respective personal representatives, heirs, successors, and assigns and shall continue as a servitude running in perpetuity with the Property. The term "Grantor" wherever used herein, and any pronouns used in place thereof, shall include the persons and/or entities named at the beginning of this document, identified as "Grantor" and their personal representatives, heirs, successors, and assigns. The term "Grantees" wherever used herein, and any pronouns used in place thereof, shall include the persons and/or entities named at the beginning of this document, identified as "Grantees" and their personal representatives, heirs, successors, and assigns. The rights of the Grantees and Grantor under this instrument are freely assignable, subject to the notice provisions hereof.

h) Termination of Rights and Obligations: A party's rights and obligations under this instrument terminate upon transfer of the party's interest in the Easement or Property, except that liability for acts or omissions occurring prior to transfer shall survive transfer.

i) Captions: The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon construction or interpretation.

j) Counterparts: The parties may execute this instrument in two or more counterparts, which shall, in the aggregate, be signed by both parties; each counterpart shall be deemed an original instrument as against any party who has signed it. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.

TO HAVE AND TO HOLD unto the United States and its assigns forever.

TO HAVE AND TO HOLD unto the [TBD: MEMBER OF THE GROUP] and its assigns forever.

IN WITNESS WHEREOF, Grantor has caused this Agreement to be signed in its name.

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
By: \_\_\_\_\_

Its: \_\_\_\_\_

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
By: \_\_\_\_\_

Its: \_\_\_\_\_

STATE OF \_\_\_\_\_)

) ss

COUNTY OF \_\_\_\_\_)

On this \_\_\_ day of \_\_\_\_\_, 20\_\_, before me, the undersigned, a Notary Public in and for the State of \_\_\_\_\_, duly commissioned and sworn, personally appeared \_\_\_\_\_, known to be the \_\_\_\_\_ of \_\_\_\_\_, the corporation that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that they are authorized to execute said instrument.

Witness my hand and official seal hereto affixed the day and year written above.

\_\_\_\_\_  
Notary Public in and for the  
State of \_\_\_\_\_

My Commission Expires: \_\_\_\_\_.

This easement is accepted this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.



the persons and/or entities named at the beginning of this document, identified as "Grantor" and their personal representatives, heirs, successors, and assigns.

UNITED STATES OF AMERICA  
U.S. ENVIRONMENTAL PROTECTION  
AGENCY

By: \_\_\_\_\_  
\_\_\_\_\_

the persons and/or entities named at the beginning of this document, identified as "Grantor" and their personal representatives, heirs, successors, and assigns.

[TBD: MEMBER OF THE GROUP]

By: \_\_\_\_\_  
\_\_\_\_\_

Attachments:

Exhibit A  
Exhibit B  
Exhibit C

legal description of the Property  
identification of proposed uses and construction  
plans, for the Property  
known or permitted title encumbrances